IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

WP(C).No. 15943 of 2007(W)

AGAINST THE ORDER IN EP.1559/2005 IN OS.1504/2000 of PRL.MUNSIFF COURT,THRISSUR
.....

PETITIONERS:
----

1. C.T.THIMOTHI, S/O CHOWOOKKARAN THOMAS, KURIACHIRA DESOM, CHIYYARAM VILLAGE, THRISSUR TALUK.

2. A.J.ALEX, S/O ALAPPAT JOSEPH, KURIACHIRA DESOM, CHIYYARAM VILLAGE, THRISSUR TALUK.

BY ADV. SRI.PRADEESH CHACKO

RESPONDENT:

KSHOMANIDHI KURIES AND LOANS PVT LTD, REGISTRED OFFICE AT 26/804,VIMALA BUILDING, EASTERN BAZAR DESOM, CHEMBUMUKKU VILLAGE, TRICHUR TALUK, REPRESENTED BY MANAGING DIRECTOR K.P.FRANCIS, AGED 55 YEARS, S/O KOLLANNOOR PYLOTH, ARANATTUKARAN VILLAGE, TRICHUR TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

= = = = = = = = = = = = = = =

W.P.C. NO. 15943 OF 2007

= = = = = = = = = = = = = = =

Dated this the 28th day of May, 2007.

J U D G M E N T

This writ petition is filed challenging the order of the learned Munsiff dated 12.1.07 closing E.A.1740/06 and passing an order of arrest warrant. The learned counsel for the writ petitioner would submit that he was never given an opportunity and though he did not file the required answers sought for in E.A.1740/06 before 12.1.07 he had filed the same on 16th January, 2007 and has also filed Ext.P9 application to review the order and recall the warrant and permit the judgment debtor to adduce evidence in support of the the contention of no means. The learned Munsiff had proceeded to issue arrest warrant on the basis of non filing of the answers as contemplated under the Appendix E to Form No.16-A of Code of Civil Procedure. In a petition under Order 21 it is mandatory on the part of the Court to satisfy its conscience that the judgment debtor has sufficient means to pay and he is wilfully evading the payment. The mere non filing of answers in Form 16 will not straight away lead to the conclusion of the means so as to order an arrest warrant. Therefore, it is only just and

proper to direct the learned Munsiff to consider Ext.P9 application on merits after affording opportunities to the decree holder as well as judgment debtor to let in evidence in support of their contentions. Till the disposal of Ext.P9, the order of arrest shall not be executed.

The writ petition is disposed of as above.

M.N. KRISHNAN, JUDGE.

ul/-